
Subject: Re: ** Maritime EB Docket 11-71

From: komã nú griðastaðir (warren.havens@sbcglobal.net)

To: Pamela.Kane@fcc.gov; rjk@telcomlaw.com;

Cc: Brian.Carter@fcc.gov; jstobaugh@telesaurus.com;

Date: Monday, August 26, 2013 4:36 PM

Ms. Kane:

Re my item 2 immediately below: That simple information on the numbered 3 items could have been provided in the time we are talking about this, at least sufficient for me to be able to either agree or not, or comment. The information must be in the Bureau and MCLM's possession. It takes no research or special drafting, only disclosure.

Re my items 1 and 3 immediately below: I take your non response to mean: "yes." (I asked simple questions, and gave the apparent answer.)

Re my item 5 immediately below: I take your non response to mean that you do not object to my description.

Since you and Mr. Keller provide no information to me to change what I described below as what I believe I should submit to the Judge, I will proceed with that.

Neither of you responded to any of the substantive issues I raised regarding the schedule. To say that you do not have time for that by tomorrow, when you asked for my input today and I provided what I believe are threshold issues, is at odds with the instruction of the Judge in my view.

Thank you,
WH

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: "warren.havens@sbcglobal.net" <warren.havens@sbcglobal.net>; "rjk@telcomlaw.com" <rjk@telcomlaw.com>
Cc: Brian Carter <Brian.Carter@fcc.gov>; "jstobaugh@telesaurus.com" <jstobaugh@telesaurus.com>
Sent: Monday, August 26, 2013 4:02 PM
Subject: Re: ** Maritime EB Docket 11-71

Mr. Havens: To be clear, the Bureau did not refuse to provide you information in response to your three inquiries. We only indicated it would not be practical to provide that to you by tomorrow.

From: komã nú griðastaðir [mailto:warren.havens@sbcglobal.net]
Sent: Monday, August 26, 2013 06:35 PM Eastern Standard Time
To: Pamela Kane; Robert J. Keller <rjk@telcomlaw.com>
Cc: Brian Carter; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Subject: Re: ** Maritime EB Docket 11-71

Ms. Kane, Mr. Keller,

1. You indicate below that Maritime and you were earlier discussing the schedule. Given that the Judge asked for the three parties to discuss and present a joint schedule, I think you should have included me from the start. I assume that a reason for this is that you were discussing potential settlement on a bilateral basis:

- Is that correct?

Thus, I disagree with your point on this item.

2. By your response below, do you mean that you will not provide to me what you currently know as to the 3 items I list? That does not seem hard to do or unrealistic.

3. I note that the Bureau's last filing in the Wireless Bureau docket on the special relief requests by MCLM and Choctaw (regarding Second Thursday, Footnote 7, etc.), you concluded with certain general comments on Footnote 7. My filings took a much different position on that. There is no Commission "Footnote 7 doctrine" or the like, etc. and, with litigation counsel, I believe we will win on that ultimately, including if we need to take it to the DC Circuit Court, which we are already prepared to do. I note that here since I am guessing (as anyone could easily guess), that MCLM and the Bureau are discussion settlement on the licenses in issue (g) in relation to the purported extraordinary need contemplated in that footnote, and its purported legitimate expansion beyond one railroad, and that you did not want me involved in that, at least to date.

- If that correct? (Any substantive response should not be in this email string, but in the one under settlement confidentiality.)

4. Assuming you will not provide that simple information by 10 am tomorrow your time (I have to assume that at this point), then to be clear:

- I will object as inaccurate to any mention by the Bureau and/or MCLM in or in relation to your contemplated two-party schedule filing that I am (Havens is) involved in any discussion of settlement or resolution.
- I intend to accurately inform the Judge that I was approached on the possible settlement matter and agreed to listen to what you two apparently already are discussing (that is apparent now since you do not deny that, and I have raised it a number of times) but you would provide to me any description of that, after I requested it, so that I could decide on this initial element of the schedule.
- I also intend to explain that I asked for your response to the items 2 and 3 I list below, but you would not respond.
- I intend to note that you would not agree to or discuss the other matters I presented below, and that you two indicated to me that you first discussed the schedule on a bilateral basis, only involving me Friday afternoon.
- For efficiently and to show the actual exchange, I may attach a copy of this email string.

I explain the preceding as part of my attempt to meet and confer. Thus, you are welcome to comment.

5. I do not see in your draft schedule, any confidentiality label. I thus assume that you do not believe that the fact that you two (Bureau and MCLM or MCLM-Choctaw) are involved in bilateral settlement communications is, itself, under confidential-settlement protection. I intend to take the same approach.

- Let me know if you object or have comments on this item.

Thank you,

- WH

From: Pamela Kane <Pamela.Kane@fcc.gov>

To: 'komá nú griðastaðir' <warren.havens@sbcglobal.net>; Robert J. Keller <rjk@telcomlaw.com>

Cc: Brian Carter <Brian.Carter@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>

Sent: Monday, August 26, 2013 2:39 PM

Subject: RE: ** Maritime EB Docket 11-71

Mr. Havens:

You were certainly free to contact either the Bureau or Maritime in response to the Judge's Order at any time, as Maritime did. The Bureau worked as quickly as it could to provide the parties with a workable schedule.

In light of the timing constraints we now face, the Bureau believes it is unrealistic for the parties to respond to the requests you lay out below before tomorrow's filing deadline. Accordingly, in light of Maritime's earlier approval of the proposed schedule, the Bureau will file that schedule as a joint filing of Maritime and the Bureau only. You can then file whatever proposed schedule you feel appropriate in light of the Judge's Order.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: komã nú griðastaðir [mailto:warren.havens@sbcglobal.net]
Sent: Monday, August 26, 2013 4:41 PM
To: Pamela Kane; Robert J. Keller
Cc: Brian Carter; Jimmy Stobaugh
Subject: Re: ** Maritime EB Docket 11-71

Ms. Kane and Mr. Keller (who appear to have the same position):

As I wrote, I cannot represent to the Judge that I am engaged in discussion of resolution/ settlement of issue (g) since I have no clue with MCLM, or MCLM and the Bureau, have in mind, and simply saying that I will listen to what MCLM, or MCLM and the Bureau have in mind, is not any sort of current participation in or commit to future participation in settlement / resolution talks.

Also, I may oppose delay of hearing matters once I hear about what MCLM or MCLM and the Bureau have in mind, if it appears unreasonable. I may seek a schedule with time for other related matters I believe should come before a hearing and prehearing matters in 11-71.

As I wrote below, there are issues to discuss among the parties before a schedule can be jointly presented, if that is your intent. In that regard, I did not get your draft until Friday afternoon, and have had since then only an hour or so business time to even work on these matters. I had to see what you would propose, since the Bureau is the party with the obligation to prosecute this (Havens et. al. do not have an obligation, but participate as we choose).

- It is not reasonable to present a substantial matter like this on a Friday afternoon for a response the next business day.

I do not know if the Judge may be available, even if on vacation, for a ruling on this simple extension request, especially if the parties agree to it.

If you still will not seek that from the Judge, then in order for me to provide to you comments on your draft that is in substantial part based on the parties engaging in settlement talks, I request that you send me asap today:

- (1) The substance, without material deletions, of your discussion to date on a settlement of issue (g): I mean between anyone in the Bureau and anyone representing MCLM and Choctaw.
- (2) Why you believe (as far as I can tell by your joint schedule draft and emails to me on it) that MCLM can, without Choctaw, commit to or propose a schedule, and proceed under it.
- (3) Why you believe that the issue (g) hearing can proceed, given that MCLM- Choctaw seek to resolve all remaining issues in issue (g) by their special relief requests before the Wireless Bureau (via Second Thursday, Footnote 7 etc.)

Thank you.

-WH

From: Pamela Kane <Pamela.Kane@fcc.gov>
To: 'komã nú griðastaðir' <warren.havens@sbcglobal.net>; Robert J. Keller <rik@telcomlaw.com>
Cc: Brian Carter <Brian.Carter@fcc.gov>; Jimmy Stobaugh <jstobaugh@telesaurus.com>
Sent: Monday, August 26, 2013 12:51 PM
Subject: RE: ** Maritime EB Docket 11-71

Mr. Havens:

We would not recommend seeking an extension of the Judge's Order at this late date. Indeed, as I understand it, he is on vacation this week and would not be in a position to rule on any such request.

Moreover, we do not think an extension is necessary. We believe the schedule we have proposed provides ample time for the parties to discuss the various issues you raise in the context of trying to resolve Issue G before we would have to file substantive motions. The dates beyond that are all dependent on the Judge's action. If you believe additional time is needed in the schedule, we are open to discussing that.

Thus, it is our intention to proceed with filing the proposed schedule we sent around on Friday. We ask that you send any comments or suggestions pertaining to that filing this evening in case they necessitate revising the proposed filing. Tomorrow morning is too late given that we must file this by noon Eastern time tomorrow.

Pamela S. Kane
Deputy Chief-- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

From: komã nú griðastaðir [<mailto:warren.havens@sbcglobal.net>]
Sent: Monday, August 26, 2013 2:28 PM
To: Robert J. Keller; Pamela Kane
Cc: Brian Carter; Jimmy Stobaugh
Subject: Re: ** Maritime EB Docket 11-71

Ms. Kane, Mr. Keller,

First, please copy Jimmy Stobaugh on email to me, as I have requested in the past a number of times. Otherwise, I will not be able to respond as quickly in many cases.

Please consider the following:

If you two agree to it, then you have my consent to the following. If you need to do that on a confidential basis, that is acceptable to me. Non-confidential is also acceptable to me.

Ms. Kane would ask the Judge today to extend by one week the date for the three parties to submit the joint proposal given that they have agreed recently to engage in discussion this week as to possible settlement or resolution of remaining matters in issue (g), and the result of that discussion may affect the proposed schedule.

I would prefer to see a draft. I suggest in 1(i) below a possible addition to the above.

Discussion:

1. It also appears to me important that, in the extra week, the parties each determine their positions and inform the Judge thereof regarding matters related to the subject site-based licenses including:

(i) whether or not Choctaw is an indispensable party in this hearing, given the Chapter 11 Plan approved by the bankruptcy court that effects how MCLM proceeds with its licenses, and given the FCC proceeding on the licenses assignments to Choctaw and related special relief requests (including re Second Thursday and Footnote 7) which include the site-based licenses,

(ii) other matters and proceedings (I am reviewing these but do not have a coherent presentation at this time, for meet and confer).

- If you two want to add language that reflects item (i) to what is submitted to the Judge (if you agree to submit something as I propose above), then you have my consent to do that. Again, I would prefer to see a draft.

2. While you two may have had some exchange on settlement, as you know, I do not yet understand what MCLM (or MCLM and the Bureau) have in mind. Until I know that, during this week, I cannot think far as to what SkyTel may accept or counter propose. I thus lack a basis to agree to a schedule that considers possible settlement.

I have commenced discussion with advisers both on ideas for settlement, and on proceeding with this hearing if there is no settlement, and with related proceedings also involving the MCLM licenses.

As you know, I took positions in this hearing that were in part in accord with the Bureau and in part different or in addition, and some of those are reflected in the Order on the motion for summary decision and under that Order, and applicable procedure, may be pursued further in this hearing.

3. My proposal above, if made to and accepted by the Judge, is more likely to result in a joint proposal to the Judge, or one that reduces differences I may express. That appears important to attempt, including in consideration of the Judge's decision on the motion for summary decision that allows Havens to proceed as the Order described.

If you do not agree to submit the above to the Judge, or do that but it is rejected, then I will give comments tomorrow morning on your agreed upon schedule.

Thank you,

W. Havens

From: Robert J. Keller <rjk@telcomlaw.com>
To: 'Pamela Kane' <Pamela.Kane@fcc.gov>
Cc: 'Brian Carter' <Brian.Carter@fcc.gov>; 'Warren Havens' <warren.havens@sbcglobal.net>
Sent: Monday, August 26, 2013 10:26 AM
Subject: RE: ** Maritime EB Docket 11-71

I think it will look fine if you simply eliminate the vertical borders on that particular line, but it is not a big deal one way or the other. Will defer to your discretion.

From: Pamela Kane [<mailto:Pamela.Kane@fcc.gov>]
Sent: Monday, August 26, 2013 1:09 PM
To: 'Robert J. Keller'
Cc: Brian Carter; 'Warren Havens'
Subject: RE: ** Maritime EB Docket 11-71

Actually it was intentional to separate the items with specific dates from the items contingent upon the Judge acting but we can delete it

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Federal Communications Commission
202-418-2393

*** Non-Public: For Internal Use Only ***

From: Robert J. Keller [<mailto:rjk@telcomlaw.com>]
Sent: Monday, August 26, 2013 1:07 PM
To: Pamela Kane
Cc: Brian Carter; 'Warren Havens'
Subject: RE: ** Maritime EB Docket 11-71

P.S. – I assume the blank box in the table on page two is a formatting error and should be deleted.

From: Robert J. Keller [<mailto:rjk@telcomlaw.com>]
Sent: Monday, August 26, 2013 1:05 PM
To: 'Pamela Kane'
Cc: 'Brian Carter'; 'Warren Havens' (warren.havens@sbcglobal.net)
Subject: RE: ** Maritime EB Docket 11-71

Maritime is fine with the proposed schedule. Tomorrow I will circulate an email to try to establish a time later this week for a conference call to discuss possible settlement.

--

Bob Keller <rjk@telcomlaw.com>
PO Box 33428, Washington DC 20033
Tel 202.656.8490 | Fax 202.223.2121

From: Pamela Kane [<mailto:Pamela.Kane@fcc.gov>]
Sent: Friday, August 23, 2013 4:27 PM
To: rjk@telcomlaw.com; Warren Havens (warren.havens@sbcglobal.net)
Cc: Brian Carter
Subject: ** Maritime EB Docket 11-71

Bob and Mr. Havens:

Enclosed please find a proposed schedule for your consideration. In light of the fact that the Presiding Judge's Order requires only the Bureau, Maritime and Mr. Havens to submit a schedule and in light of Choctaw's limited party status in the hearing, we do not believe it is necessary for Choctaw to be involved in negotiating a proposed schedule and have thus not included them on this email.

Please let us know your thoughts on the proposed schedule. As a reminder, we need to be prepared to file this with the Judge by noon eastern time on Tuesday.

Pamela S. Kane
Deputy Chief -- Investigations & Hearings Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
202-418-2393

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Information from ESET Smart Security, version of virus signature database 8722 (20130823)

The message was checked by ESET Smart Security.

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